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ORIGINAL (2)

98-7771

NO: _____

IN THE UNITED STATES SUPREME COURT

BARBARA SCHWARZ, (PLAINTIFF, APPELLANT, PETITIONER)

VS.

NATIONAL SECURITY AGENCY,
DEFENSE INVESTIGATIVE SERVICE ,
AND
ON-SITE-INSPECTION AGENCY,

(DEFENDANTS, APPELLEES, RESPONDENTS)

UNITED STATES DISTRICT COURT OF COLUMBIA,
CASE NUMBER: 98-0066 (HHK),

UNITED STATES COURT OF APPEALS FOR COLUMBIA CIRCUIT,
CASE NUMBER: 98-5364.

PETITION FOR URIT OF CERTIORARI

_____ (TERM)

DATE: January 19, 1999

Barbara Schwarz

BY: BARBARA SCHWARZ,
335 EAST BROADWAY,
APT. 401
SALT LAKE CITY,
UTAH 84111

Supreme Court, U.S.
FILED
JAN 2 2 1999
OFFICE OF THE CLERK

52pp

Barbara Schwarz
(Your Name)
Petitioner

v.

National Security Agency, et al
(Respondent's Name)

See, in general Rules 39.1 thrc 39.4.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Barbara Schwarz

The petitioner, ..., asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed in forma pauperis. Petitioner has previously been granted leave to so proceed in (name the courts below, if any, that have authorized pauper status in this case). Petitioner's affidavit in support of this motion is attached hereto.

Barbara Schwarz

Dated this: January 19, 1999

/s/ (Your Name)

See Rule 34.2 (signature required

AFFIDAVIT IN SUPPORT OF MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

I, Barbara Schwarz being first duly sworn, depose and say that I am the petitioner in the above-entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and that I believe I am entitled to redress.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of proceeding in this Court are true.

1. Are you presently employed? Yes---- No-X-
   a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

   b. If the answer is no, state the date of your last employment and the amount of the salary or wages per month which you received.

My last employment was 1989. I divorced back then, approx. 800 $ / month, I am so poor since I can't pay Court fees and also can mind you only the expense of my Petition for writ of Certiorari and no further expenses.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends or other sources?
   Yes-X-- No -X--
   a. If the answer is yes, describe each source of income and state the amount received from each during the past twelve months.

I live from what state for relatives can spare. I is invalid engaged to Rose Mont, Can't count utilities. I can't work in the United States, before I found my Husband Klaus Rotzbaum organ. This Petition for Writ of Certiorari should help out to finance my case.

3. Do you own any cash or checking or savings account? Yes ---- No -X--
   a. If the answer is yes, state the total value of the items owned.

But my name is on a checking account together with my indigent relatives Rosemarie Brodzinski. Not-my-in account is my money. It is just my name is only on the account that I can get the money, when she is sick. She is sticking one Dime only 546,84 $ on the account, she can't pay more.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? Yes ---- No -X--
   a. If the answer is yes, describe the property and state its approximate value.

5. List the persons who are dependent upon you for support and state your relationship to those persons.

Nobody

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: January 19, 1999 /s/ Barbara Schwarz

QUESTIONS PRESENTED:

1) Is it constitutional by National Security Agency, ("NSA"), Defense Investigative Service, ("DIS") and On-Site-Inspection Agency,("OSIA") to provoke lawsuits by not responding to Freedom of Information/Privacy Act requests?

2) Is it constitutional by NSA, DIS and OSIA to return Postal Domestic Return Cards conspiratively incomplete to me so that I don't have any evidence when my FOIA/PA requests were delivered and if they were delivered to the agencies?

3) Is it constitutional by the agencies, NSA, DIS, and OSIA to ignore any supplemental or new FOIA/PA request by me, as for example to if Mark Rathbun (de Rothschild), members of his family, their attorneys or any Independent or Special Counsel addressed the agencies to obtain records on me, in order to withhold those records from me and to obstruct justice?

4) Is it constitutional by NSA to wrongfully claim that my FOIA/PA request would be not specific enough to retrieve records, in order to deny the records to me?

5) Is it constitutional by NSA to harass me financially by demanding search and copy fees by knowing that I am unable to pay such fees because of my impecuniosity.

6) Is it constitutional by the agencies and especially the U.S. Department of Defense, Office for Freedom of Information and Security Review, ("DFOISR") to not explain their records systems to me in determination of "no records" that are so unspecific that they don't meet FOIA/PA standards?

7) Is it constitutional by all above mentioned agencies to deny a declaration to me as to their search and findings for the records that I requested or is it a clear sign of fear to testify under oath that they withheld records before me?

8) Is it constitutional by the agencies to only provide me with an affidavit if I file a case against them? Aren't they not wasting tax payers money with this attitude?

9) Is it constitutional by DIS to ignore my administrative appeal?

10) Is it constitutional by DIS to ask me to provide Mark Rathbun's adress by knowing exactly that I don't have it to get rid of my request?

11) Is it constitutional by DIS to avoid looking for the records of Claude de Rothschild, as requested by me?

12) Is it constitutional by DIS having manual records but not checking them in regards of my request?

13) Is it constitutional by DIS not to inform me during the processing of my first FOIA/PA request that I can file an application demonstrating compelling need for expedited processing and when I finally was informed during a later FOIA/PA request, to not mail me the form papers and instructions as to this application? Doesn't that mean that DIS knew that I have a compelling need for expedited processing and that they tried with unfair methods to prevent an application hereto by me?

14) Is it constitutional by DIS to ignore my request for expedited processing, after being informed that innocent and wrongful incarcerated Mark Rathbun might die behind bars, if I don't find the documents where to contact him or his respresentatives, documents the defendants are having, and by being informed that a German originated and controlled Nazi-conspiracy infiltrated the U.S. government and by being informed that I have to live in total poverty as long as I don't find Mark Rathbun?

15) Is it constitutional by NSA, DIS and OSIA to file declarations, after there was no way anymore out not to provide them, because case was pending in court, that were not done in good faith, contained evidently falsehoods and omissions?

16) Is it constitutional by DFOISR to mail so unspecific mail to me that I don't even know for what agency they are answering?

17) Is it constitutional by OSIA to not inform me that they dumped my FOIA/PA request to DFOIRS and provoke a lawsuit with it, because I received no response by OSIA to my request for records?

18) Is it constitutional by OSIA to ignore my extended FOIA/PA requests and to not provide records hereto?

19) Is it constitutional by U.S. Attorney of Columbia, attorney for defendants to mail affidavits by defendants to wrong address so that I shall not get them? Doesn't it fit into the conspiracy by the agencies to deny declarations to me in the first place?

20) Is it constitutional by U.S. Attorney of Columbia to not file the mail loss report, that I mailed to them, to the Post Office

so that the affidavits will be not retrieved for me?
21) Is it constitutional by the U.S. District Court of Columbia to deny constantly my right for safe papers by not mailing me my confirmation copies of motions filed in this case back to me, to keep me in the dark about my own case?
22) Is it constitutional by same court to withhold the case number of this case of mine, 98-0066 HHK for up to three months and then wrongfully informing me, as this court and the U.S. Attorney of Columbia did, that case number would be 96-0066 HHK and not 98-0066 HHK?
23) Is it constitutional by U.S. Marshal of Columbia to not mail to me a copy of the Process Returns Receipt; after they had served summons and complaint to defendants, to deny my right for safe papers and to be informed about my own case?
24) Is it constitutional by USDC of Columbia, U.S. Court of Appeals for Columbia Circuit, U.S. Attorney of Columbia, U.S. Marshal of Columbia and the defendants to conspire together against my case, myself and Mark Rathbun?
25) Is it constitutional by the USDC of Columbia to deny a docket of my case to me for many months to keep me uninformed about the status of my case and about what was filed and not filed?
26) Is it constitutional by USDC Columbia judge Henry H. Kennedy to grant counsel for defendants two motions for enlargement of time to file motions, without that counsel had to name why they needed time extention exactly. Is it constitutional that judge Kennedy allowed defendants to deliberately delay the case?
27) Is it constitutional by judge Kennedy to order me to respond to defendants motion to dismiss as filed by defendants counsel, or to dismiss my case by knowing that defendants attorneys did deliberately not mail me any service copy of those motions so that I can't reply?
28) Is it constitutional by judge Kennedy having order USMS to do the service of summons and complaints to the defendants on my case but to let me completely in the dark about the progress of the case and to order me seven months later to prove that OSIA was served or he would dismiss this defendant? Shouldn't he and his court have me informed seven months earlier that if the address

was changed or insufficient that I have to provide the complete and sufficient address, instead of waiting so long, instead of knowing that I could not provide the address, because he and his court and the USMS kept me deliberately uninformed about my case? Also, the On-Site-Inspection Agency is an U.S. agency and the court, the clerks or the USMS could have looked up the latest address of the agency in a governmental directory, why didn't this happen?
29) Is it constitutional by U.S. Attorney Assistant McCool to withdraw from case without informing me as to why he handed my case to David T. Smorodin?
25) Is it constitutional by USDC, judge Kennedy to rule very superficially on July 20, 1998, after he had evidence of bad faith and incomplete and incorrect statements in the affidavits by defendants, after he had evidence that parts of my FOIA/PA requests were completely ignored and that nothing was done as to FOIA/PA standards, that the agencies fulfilled their obligation towards FOIA/PA? How blind are judges allowed to be?
26) Is it constitutional by USDC of Columbia judge Kennedy to be biased towards my case, myself and Mark Rathbun and not recusing himself in order to deny us our rights?
27) Is it constitutional by U.S. Court of Appeals for Columbia Circuit Court judges Silberman, Henderson and Tatel to allow with a judgment filed November 12, 1998 for judge Kennedy to come away with his corrupt and unconstitutional ruling and his bias towards my case, Mark Rathbun and myself?
28) Is is constitutional by the appeal judges to bluntly claim the falsehoods in their judgment, saying that I would have failed to demonstrate that the search for my records were not conducted reasonably calculated, when the evidence was filed to the courts? How blind or corrupt are appeal judges allowed to be?
29) Is it constitutional by the Columbia Circuit judges to be biased towards my case, Mark Rathbun and myself, to cover for Kennedy in order to deny our rights, keep innocent Mark Rathbun further wrongfuly behind bars where he could lose his life. Is it constitutional by the courts to cover up a German Nazi-conspiracy that infiltrated the United States government?

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INDEX TO APPENDICES:

All documents relevant to this case are mentioned in the part "Statement of the Case" of this Petition for Writ of Certiorari. Those documents are in the original court files of the USDC of Columbia and the U.S. Court of Appeals for Columbia Circuit Court. I can't attach them all, because of my impecuniosity. However, the court orders and dockets are attached to this Petition as following:

APPENDIX A: The docket sheet of case 98-0066 HHK of the USDC Columbia, 5 pages,

B: The docket sheet of the case 98-5364, USCA Columbia, 5 pages,

C: Order by judge Kennedy filed May 8, 1998, granting

D: Order by judge Kennedy filed May 15, 1998, granting leave to proceed in forma pauperis to me, but trying to dismiss one defendant, OSIA, because of my alleged failure to have this defendant served.

E: Order by judge Kennedy filed July 20, 1998 dismissing my case.

F: Memorandum Opinion by judge Kennedy as to dismissal of my case of July 20, 1998.

G: Order by appeal judges Silberman, Henderson and Tatel

filed October 28, 1998, ruling that they don't want to hear oral argument.

H: Judgment by Columbia Circuit Court judges Silberman, Henderson and Tatel filed November 12, 1998 dismissing my appeal.

I: Order by clerk of Columbia Circuit Court, denying Petition for Rehearing, filed on Dec. 23, , 1998.

AUTHORITIES CITED:

U.S. Constitution,
Bill of Rights,
U.S. Code, Title 5, 552 and 552a, FOIA/PA

IN THE UNITED STATES SUPREME COURT

BARBARA SCHUARZ, PLAINTIFF, APPELLANT, PETITIONER, vs.
NATIONAL SECURITY AGENCY, DEFENSE INVESTIGATIVE SERVICE AND ON-SITE-INSPECTION AGENCY, DEFENDANTS, APPELLEES, RESPONDENTS.

I, Barbara Schwarz plaintiff of this case before the U.S. District Court of Columbia, case number 98-0066 HHK and appellant of this case before the U.S, Court of Appeals for Columbia Circuit, 98-5364, file herewith a Petition for Writ of Certiorari to the U.S. Supreme Court. It was granted to me by the both courts to proceed in forma pauperis with this case. I ask same by U.S. Supreme Court and attach my motion hereto and supporting affidavit of impecuniosity.

OPINION BELOW

The opinion by USDC of Columbia judge Henry H, Kennedy was on July 20, 1998, that all three agencies fulfilled their duty towards my FOIA/PA requests, but he ignored the evidence that I attached that defendants ignored parts of my requests and that the affidavits that defendants submitted contained falsehoods and omissions and were not filed in good faith.(See app. E and F, attached to this Petition.)

The opinion by USCA Columbia judges Silverman, Henderson and Tatel was on November 12, 1998, that they affirmed the unconstitutional and biased ruling of judge Kennedy. (See app. H and I attached to the Pet.)

JURISDICTION:

Both courts had jurisdiction over the case and the appeal, none of the courts denied having jurisdiction.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED:

1) U.S. Constitution, Article III, Section 1: The judges of the U.S. District Court of Columbia and Columbia Circuit Court are biased towards my case, Mark Rathbun and myself and did not hold their offices during good behavior. Section 2: The did not treat my case under the law and equity arising under the U.S. Constitution. They conspired against Mark Rathbun and myself. Section 3: The judges cover for a German Nazi-conspiracy, an enemy of the United States, which is treason,

same is fact for the defendants and their attorneys.

2) Article IV, fair judicial proceedings were denied to me by the Columbis courts. I was not even allowed to know my own case number for many months, and judge Kennedy tried tricks to get defendant dismissed from case. Section 2: I was not entitled to any privileges by the Columbis courts. Section 4: Defendants, their attorneys and both Columbia courts allow criminal infiltration of German originated and controlled Nazi-conspiracy without doing anything against them. This Nazi-conspiracy infitrated federal U.S. offices and courts in order to deny American's their rights and to destroy secretly American's values.

3) Amendment I. As my cases are given only to biased judges within the Columbis courts, my petition right to petition to the government for redress of grievances is being denied, because they anyhow don't want to listen or don't want to look at the evidence.

4) Amendment IV. My right to be secure on my papers was denied by the Columbis courts to me. My confirmation copies were not mailed back to me with evidence of filing so that I can't know what the status of my case is and that judge Kennedy can dismiss the case based on that I was not informed about stages of my case.

5) Amendment VII. A jury trail, despite requested was denied to me.

6) Defendants, their attorneys, and both Columbia courts were informed that I try to get hold of wrongfully incarcerated Mark Rathbun, who is only behind bars because a Nazi-conspiracy framed him having harmed me. They know that I can't testify on his behalf the truth, because I don't know exactly where he is being held and what court has jurisdiction over his case. They know that we are legally married, and that they are having the information that we seek to get hold of each other. This is a violation of Amendment IX, our right of marriage and family. They also know that I have to live in total poverty without having found Mark and can't even work, that is another violation of my right to make a living, as in Amendment IX.

7) Mark Rathbun has to suffer innocent behind bars where he can lose his life, just because defendants, their attorneys and the Columbia courts conspire against us. His right of liberty and speedy trail is denied by them to him, that is Amendment V and VI.

8) The defendants, their attorneys and the Columbia Courts also

know that Mark Rathbun is the target of this Nazi-conspiracy behind bars and that he inflicted of cruel and unusual punishment behind bars, that is a violation of Amendment VIII.

9) The defendants, their attorneys and the Columbia Court know that we are targets by a mentally retarded German Nazi-conspiracy that secretly rules the United States including all levels of federal offices and that we are treated as rightless slaves. This is a violation of our rights as in Amendment XIII.

10) The defendants, their attorneys and the Columbia Courts know that U.S. Code, Title 5, 552 and 552a, the Freedom of Information Act and Privacy Act, were violated as to my requests to the defendsnts. They know that defendants deliberately deny records to me that pertain to my requests and they know that no search by defendants was made standardly as to FOIA/PA laws. The declarations by defendants were faulty, contained omissions and falsehoods as documented by me with evidence, nevertheless the courts allowed defendants to come away with it.

Judge Kennedy's critic in this case should say it all. He critizised that I would find faults within the defendants on every step of the way. It is a fact that those faults exist, because if those faults would not exist, I would be not able to find them. Instead of using his critic on defendants who made the faults, it speaks for judge Kennedy and his bias to blame me of having discovered those faults.

STATEMENT OF THE CASE:

I) I, Barbara Schwarz, mailed on October 9, 1997, certified mail P 416 332 268 to National Security Agency.

I asked National Security Agency ("NSA") for my records under FPIA/PA. The letter is of October 8, 1997. To make it easier on NSA to retrieve the records I requested, I gave them background information, that are attached to my complaint as filed in the USDC as an affidavit of October 8, 1997. (See app. 3, attached to complaint, my affidavit.)

The Domestic Return Card of this certified mail came back to me. It was signed by an agent with name Patricia Schuyler, or similar, but she did not date the card nor stamp it with a received stamp as required for evidence of delivery of the mail to the proper address. (See app. 4, the incomplete Return Card attached to my complaint to USDC)

On the backside of the card is a date stamp by the United States Postal Service. It says, that the card was mailed back to me on October 22, 1997. In other words: NSA has received my mail before October 22, 1997. (See a copy of this card, the backside, attached as app. 5 to my complaint)

On October 29, 1997, I mailed my FOIA/PA request and my affidavit of October 8, 1997 again to NSA, and urged them to acknowledge the receipt of the FOIA/PA request and affidavit. (See app. 6, attached to my complaint filed to USDC.)

After I heard again nothing by NSA, I mailed my complaint against this agency to the USDC of Columbia on November 20, 1998.

On January 22, 1998, I finally received a FOIA/PA request Interim Response by NSA by someone with name Pat, apparently the same person that received my mail three months earlier with certified mail. Case number J 9039-98 was assigned to my request. (See app. A, attached to this Opening Brief, copy of the card, front and back.)

I am certain, that if I would have not filed a court case against NSA they would have not responded at all to my FOIA/PA request.

On December 5, 1997, I received a letter by NSA, Joann H. Grube, Deputy director of Policy, in response to my FOIA/PA. It is an unspecific information as to that NSA has no records on me or pursuant to my request. I was not informed as to what record systems NSA has and what records were exactly searched to retrieve the records that I requested.

On December I2, I997, I mailed an extended FOIA/PA request to NSA, FOIA Director. (See app, C. copy of this FOIA/PA request)

Also on December I2, I997, I mailed an appeal to the determination by Joann Grube of December 5, I998 to Appeal Authority of NSA. (See appeal attached as app. D attached to my Opening Brief as filed in USCA Columbia)

On December I3, I998, J wrote to NSA, director also that I remail my declaration of October 8, I997 again and informed NSA that I have moved. (See app. E attached to my Opening Brief as filed in USCA Columbia)

NSA acted very strange by not assigning a new FOIA/PA request number to my extended FOIA/PA request, but just to inform me on January 22, I998, that my FOIA/PA request is 9039-98, is no acknowledgement that I appealed this FOIA/PA request already on December I2, I997 and no acknowledgment that I had mailed on December I2, I997 an extended, a new FOIA/PA request.

On January 28, I998, I mailed a nudge to NSA to acknowledge appeal and extended FOIA/PA request. (See app. F, copy of this letter)

On February I7, I998, I finally received a letter by NSA, Joann Grube. She wrote as I have provided additional data, my appeal is being handled at the initial stage. She admitted that she searched earlier on only employee files, but no other files. (See app. G, a copy of her letter attached to my Opening Brief to USCA Columbia)

On February 25, I998, J listed to NSA, Ms. Grube exactly what kind of records she shall search for records pertaining to my FOIA/PA requests. I also asked NSA in an extended FOIA/PA request to check if they have any records by Mark Rathbun, (de Rothschild), his attorneys or any Special or Independent Counsel, that addressed NSA for copy of my records or FOIA/PA records or correspondence with NSA and that I want a copy of their correspondence with NSA. I had already authorized NSA to provide the above mentioned individuals with a copy of my NSA FOIA or other records, as soon they should request those records. I informed NSA that Mark Rathbun is wrongfully incarcerated, because a Nazi-conspiracy framed him in court and that I am his proper relief-witness and that it is important that I get hold of him.

I received no response to this second extended FOIA/PA request and had to remail it to NSA on March I9, I998 and April I5, I998. Apparently, NSA had records to this request and tried to ignore the FOIA/PA request by not responding. (See this 2nd extended FOIA/PA request of February 25, I998 attached as app. H to my Opening Brief to USCA Columbia)

On February 25, I998, I also mailed an appeal to the NSA appeal

authority as to the Grube determination of February I7, I998, because Ms, Grube had ignored large potions of my FOIA/PA request and did not provide me with any declaration as to her search and findings. (See app. I, my appeal of February 25, I998 attached.)

On March 26, I998, my appeal on J 9039A-98 was acknowledged finally by Susan A. Arnold, Assistant General Counsel. (See app. J, copy of this letter attached to my Opening Brief in USCA Columbia)

My extended FOIA/PA request was not acknowledged as received, but was mailed with the same mail to NSA.

On April 7, I998, I received a letter by Barbara Paisley of NSA, chief FOIA/PA Services. She has assigned a new case number Serial: J 9I94-98 to my FOIA/PA request as to German Nazi-activites within the United States. Her determination says, that my questions would be not specific enough, but fact is, that my questions are specific enough. (See app. C, to my Opening Brief) Ms. Paisley tried to get rid of my FOIA/PA by I) wrongfully claiming that my FOIA/PA request would be not specific enough, 2) to harass me impecunious person, by asking me outrageous fees to pay for her search of the records. (I want to remind the court that NSA knew that I am impecunious, because of the case I filed against NSA to the USDC Columbia and that I am unable to pay any fees.) (See the Paisley letter attached as app. J, Opening Brief)

On April I5, I998, I filed a declaration of impecuniosity to NSA and asked to waive the fees. (See this declaration attached to Op. Brief app. K). I had to mail this declaration on April I5, I998 again, because I received no acknowledgement by NSA hereto.

On April I5, I998, I filed another authority to NSA to provide Mark Rathbun, his family, their attorneys, or any Special or Independent Counsel for my FOIA/PA or other records. I had to mail this authorizatio on May 23, I998 again, because I received no response by NSA . (See app. L, this authorization attached to Opening Brief to USCA Columbia)

On April I5, I998, I wrote to Barbara Paisley, that she is wrong that my FOIA/PA request would be unspecific and referred her again to it. (App. C) I asked her to mail me a copy of their records system, so that I could point her to the records she should search. I complained that I don't get any acknowledgment as to my FOIA/PA request if Mark Rathbun, his family, their attorneys or any Special or Independent Counsel addressed NSA for records pertaining to me, ect. This letter was remailed by me on May 23, I998 also to Gary W. Winch, Director of Policy of NSA, because I received no response.

(See app. M, copy of this letter attached to Opening Brief as pertaining)

On May I5, I998 I complained also to Barbara McNamara of NSA that I receive no response to my FOIA/PA request if others requested records pertaining on me and I remailed this letter on May 23, I998 to Gary W. Winch, because I received no response.

Gary Winch, the Director of Policy of NSA wrote a declaration that was filed by attorneys for NSA in USDC around May I, I998. I refer this court to the declaration, that this declaration was not done in good faith, because Winch left many important facts out, as I documented with my affidavit in response and with this statement of the case, that says that there was much more correspondence and cover up by NSA.

On May 7, I998, I received a letter by NSA, Barbara McNamara, on my appeal. The incomplete superficial and dishonest "search" by NSA, Joann Grube and Barbara Paisley was covered up by McNamara with an unspecific letter. She refused a declaration to me, which is evidence of foul play and bad conscience.

I again received no, absolutely no information of Mark Rathbun, his family, their attorneys or any Special or Independent Counsel addressed this office for my FOIA/PA or other records and what NSA responded to them. (See app. N, copy of the McNamara letter attached to O.Brief)

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2) On October 8, I997, I wrote a FOIA/PA request to Defensive Investigative Service, Director Margaret R. Munson with certified mail P 4I6 337 798, that I mailed on October 9, I997. (See app. 7 to my complaint as filed in USDC Columbia)

I asked for records under FOIA/PA. (See app. 8, this letter of October 8, I997, attached to my complaint.)

To make it easier on this agency to retrieve records on me, I attached them a declaration of identity, two pages of October 8, I997. (See app. 3 attached to my complaint, this affidavit.)

The Domestic Return Card of my certified mail was returned to me without received stamp of this agency, only with illegible signature by someone as Dee Fenek (or similar) and date of October I5, I997. (See app. 9, this Domestic Return Card attached)

As I did not get any response to my FOIA request, I remailed this request again on October 29, I998 with another letter to Margaret Munson and urged her to respond. (See app. I0, a copy of this letter attached to my complaint as filed in USDC)

As I received no response, I mailed on November 20, I997, my complaint to the USDC Columbia.

On November 25, I997, I received a letter by Defense Investigative Service ("DIS"), by Leslie R. Blake, Manager Office of FOIA and Privacy, in which he acted as he would have not received my FOIA/PA request of October 8, I997 or my affidavit of same date. He just referred to my letter of October 29, I997. Despite he must have read my affidavit and knew that I don't know certain data about myself, he asked for data as social security number, middle name (despite that I got none) and date and place of birth. His letter was nothing else than an attempt to get rid of my FOIA/PA request. (See copy of his letter attached as app. J to my Opening Brief)

He also wrote no administrative case number of my FOIA/PA request in his letter of November 25, I997, but he wrote one only small on the copy of my letter of October 29, I997, that he mailed back to me, the number C97-4528. (See copy of this letter with number attached as app. K)

On December 2, I997, I referred Blake again to my FOIA/PA of October 8, I997 and to my declaration of same date and I also extended my FOIA/PA request. (See app. L, this letter attached to my Opening Brief.)

On December I6, I997, Leslie Blake mailed me another letter and suddenly he provided an administrative case number FOIA I72-97, but this is not the number C/97-4528, that he wrote in November I997 on a copy of my letter and mailed it back to me.

Blake mailed me a "no records" response. He tried to refer me to other agencies and mailed me a very unspecific determination of "no records," in which he did not inform me what kind of records they have and why he only checked one system and if this is the only system of records that he has. He did not acknowledge the receipt of my extended FOIA/PA request, despite that I asked him for it and ignored my request for records on Claude de Rothschild. (See his letter attached as app. L to Opening brief.)(His letter is dated December I6, I997.)

On December 20, I997, I appealed the Blake determination to the Director of DIS. I requested an affidavit as to the search and findings for my records and complained that parts of my request were ignored by Blake. (See this appeal attached as app. M to my Opening Brief.)

On January 28, I998 I had to write again to director of DIS because I received no acknowledgment that they have received my appeal. I mailed the appeal again this day.

DIS deliberately ignored my appeal and mail, so I had to remail my appeal a third time on February I0, I998 to director of DIS, personal. (See app. N, a copy of this letter attached to my brief.)

Finally on February I0, I998, I received a letter by DIS director Margaret Munson. She deliberately ignored that her office did absolutely

no check on records on Claude de Rothschild, nor had given me a proper information on what records they have and what records they searched for records pertaining to my request. She too denied my right for an affidavit, which is evidence that she too knew that records are covered up before me. (See app. O, a copy of her letter, dismissal of my appeal of February 10, 1998, attached to my Opening Brief as filed to USCA Columbia)

On April 8, 1998, I filed a new FOIA/PA request to DIS, Director Munson. This time I asked if Mark C. Rathbun (de Rothschild), his family, their attorneys or any Special or Independent Counsel addressed DIS and asked DIS for a copy of my FOIA/PA or other records at DIS. (See app. P, copy of this FOIA/PA attached as app. P to my brief.)

On April 17, 1998, I received a letter by Leslie R. Blake, the Chief of FOIA office. He assigned same administrative case number I72-97 to my new FOIA/PA request. He provided me with very unspecific determination of "no records", not explaining what records systems they are having, he wrote only that the individuals listed in my FOIA/PA request have not asked DIS for records on me. Despite that he knew that I don't know where Mark Rathbun is, he asked me such rididulous thing as to provide his address. (See app. Q, this letter attached to O.-brief)

On April 25, 1998, I wrote an appeal to DIS, to director Munson, appealing that Blake did not provide me with affidavit as to the truthfulness of his no records-determination. I also complained that DIS did not check their manual records for records pertaining to my request. (See app. R, copy of this appeal attached to my Opening brief.)

On April 30, 1998, I received a letter by Blake saying that the decision on my appeal will be delayed unless I can demonstrate a compelling need for expedited processing. (See app. S, copy of his letter attached to my Opening Brief.)

It is strange that I was not provided with this option on my first FOIA/PA request to this agency and my rights for expedited processing was denied by DIS as to my first FOIA/PA request and it's appeal.

Further odd is, that Blake mentioned an attachment, to be used to apply for expedited processing, but he did not mail it to me. I claim that he did not attach it, because he knew that I had compelling need for expedited processing on all my FOIA/PA requests to his agency and that he did not want to grant it in the first place by not mailing the form paper. (See again app. S)

On May 5, 1998, I had to write to Blake again and asked him for the form paper that he did not mail to me. (See app. T, copy of this mail attached to Opening Brief as filed to USCA Columbia)

On May 8, 1998, Blake mailed me finally the form paper. (See his letter attached to this brief as app. U to O-Brief)

On May 14, 1998, I mailed a statement to Blake and a request for expedited processing. I explained under oath that it is very vital to obtain the records by DIS, because I have to find Mark C. Rathbun (de Rothschild), who is not only my husband and I have to live without him in total poverty, but that I am his relief witness, that he is wrongfully incarcerated because a Nazi-conspiracy framed him in court and that he might lose his life behind bars. (See app. V, copy of this statement under oath attached to my brief.)

On June 19, 1998, I had to remail this statement, because DIS in usually ignorant pattern ignored the statement for expedited processing and my appeal. (See app. V again.)

I want to point the court also to the affidavit by DIS, Leslie Blake, that his attorneys filed to USDC when he not longer could prevent to file an affidavit, that was so long denied to me. His declaration is not made in good faith. He mentioned falsehoods and did not list the true events and all events that happened between DIS and me and my FOIA/PA requests and anpeals. His affidavit is attached to a response motion by U.S. Attorney of Columbia, filed in USDC Columbia around May 1, 1998. Compare the wrongful and incomplete data by Blake by looking at the exhibits of my complaint and the appendices that I attached to this Opening Brief and the court will come to the conclusion, that DIS, provided an affidavit that is not made in good faith and it must be concluded that DIS is deliberately withholding records from me and is covering those records up.

3.) On October 8, 1997, I wrote to On-Site-Inspection Agency, Director Brig. Gen. Thomas E. Kuenning jr. a FOIA/PA request, and attached my affidavit of October 8, 1997. I mailed the mail with certified mail P 416 337 799 on October 9, 1997, (See app. II, the receipt for certified mail, see app. I2, the FOIA/PA request and app. 3, the affidavit)(All attached to my complaint filed in USDC)

The Domestic Return Card of this certified mail was returned to me in October, with no agency received-stamp, only an illegible signature and a date of delivery of October 13, 1997. (See this card attached as app. I3 to Opening Brief.

The agency did not respond to my FOIA/PA request.

On October 29, I997, I mailed my FOIA/PA request again to On-Site-Inspection Agency and reminded director of this agency to respond to this FOIA/PA request. (See app. I4 attached to my complaint)

As I received no response by November 20, I998, I mailed my complaint versus this agency to USDC of Columbia.

On October 28, I997, a card of October 27, I997 was mailed to me by Office of Director. Freedom of Information and Security Review, ("OASD(PA)"), room 2C757, I400 Defense Pentagon, Washington D.C. 2030I-I400. It listed my FOIA/PA request of October 8, I997 with case number 98FOI34 and 98POOI6. Ms. Curry, who signed the card failed to explain to me that this was the FOIA/PA request that I had mailed to On-Site-Inspection Agency. I found out much later, that this FOIA/PA request 98FOI34, 98POOI6 was not the FOIA/PA request that I mailed on October 8, I997 to Defense Pentagon. My FOIA/PA requests to NSA, to DIS and to OSIA were not the only FOIA/PA requests I mailed around October 8, I997. (See card attached as app. W to my Opening Brief)

Finally on November I3, I997, I received a letter by director of Freedom of Information and Security Review, OASD(PA), A.H. Passarella on my FOIA/PA reuests 98-F-OI34 and 98-P-OOI6. On this date I heard first time that On-Site-Inspection Agency has forwarded my FOIA/PA request to them. OSIA could have written a note to me, that they transferred my request, but in their eyes I apparently have not so much rights to let me know what happened to my papers. Passarella informed me with a very unspecific determination that OSIA has no records on me. He did not list the record system of OSIA and did not explain what records were searched to what names or subjects pertaining to my FOIA/PA request. No affidavit, as to that the "No records"-determination indeed is true, was attached. (See app. X, the determination of Nov. I3, I997 by Passarella, that does not meet FOIA/PA standards, Opening Brief)

On December 2, I997, I wrote another FOIA/PA request, an extended FOIA request for On-Site-Insoection Agency to Director, Freedom of Information and Security Review, OASD/PA, in which I asked for records by this agency over post war German Nazi-activities and nuclear, chemical and biological weapons. I also asked for records on General Claude de Rothschild, an American citizen, who was bad mouthed by the Germans of being responsible for building up C-weapons. (See app. Y, copy of this extended request attached to my Opening Brief)

On December I2, I997, I complained to Passarella that I don't receive acknowledgment that his agency received my extended FOIA/PA

request. (See copy of appeal attached as app. Z to Opening Brief

Also on December I2, I997, I wrote my appeal to the determination by Passarella for OSIA, on 98-F-OI34 and 98-P-OOI6. I complained that I received no declaration, unspecific determination and that parts of my FOIA/PA records were ignored. (See app. AA, copy of request Opening Brief)

Not sooner than one month later, on January I3, I998, Passarella acknowledged the receipt of my FOIA/PA appeal on 98-F-OI34 (A) and 98-P-OOI6 (A) and I was informed, that I still have to wait with a decision on my appeal. (See app. BB, attached to the brief, his letter of Jan. I3, I998.)

On March 30, I998, I received a determination to my extended FOIA/PA request on 98-F-OI34 and 98-P-OOI6 to On-Site Inspection Agency (OISA). This determination is a bit more specific than the first one I got, but this determination also does not meet FOIA/PA standards. I was not informed about the OSIA record systems, except that they have electronical files, as any other ageny too. Clear is that OSIA failed to check their manual files. (See this determination attached as app. CC to the brief.)

On April 23, I998, my FOIA/PA appeal 98-F-OI34 (A) and 98-P-OOI6 (A) was denied with some of my other FOIA/PA requests by Office of Secretary of Defense, by Director D.O. Cooke, Director for Administration and Management. (See his denial of appeal attached as app. DD to the brief)

The denial is ignorant as to that no complete search had been done for the records that I requested and that I received not the requested affidavit.

Cooke also altered my name on the envelope in which he mailed the denial of the appeals. He altered ny name to Schwartz on the envelope, apparently had the plan to have his letter misdelivered, but per accident, I received the letter nevertheless. (See app. EE, copy of envelope attached to Opening Brief)

There is no doubt that the denials of my appeals are so unspecific, that they don't meet FOIA/PA standards.

An affidavit was filed by counsel of OSIA around May I, I998 in USDC Columbia. Declaration is of April I6, I998 by David J. Rigby, Chief, Public Affairs, On-Site Inspection Agency. (See affidavit attached to response by defendants, as filed around May I, I998 to USDC Columbia on case 98-cv-0066 HHK) The declaration by Rigby contains falsehoods and in addition is incomplete as to the events between OSIA, me, DFOISR. (See hereto my declaration, I6 pages as filed in USDC, with date of declaration as of May 29, I998.)

I attached to this declaration for the information of the court also other determinations by DFOISR to make the point that non-standard FOIA/PA denials for records are the common pattern by DFOISR to deny my records to me, to come away with sloppy and deliberately incomplete searches for records. (See those letters attached to my affidavit, points 42 to 59 as in original court records.)

It is also necessary to mention here that the Office of U.S. Attorney apparently had plan that I should never see those affidavits as attached to their response motion, because they mailed it to my former address and the USPS must have returned those papers to them. I only received those affidavits and the response motion by US Attorney of Columbia, because I constantly complained to U.S. Attorney and USDC Columbia, that I have not received those papers and J can't respond to them.

I asked US Attorney of Columbia to fill out a mail loss report, to find out why USPS has not forwarded the big letter, that US Attorney of Columbia was supposed to mail to me on May I, I998. (See app. FF, my copy to U.S. Attorney Wilma Lewis and her assistant Steven McCool of May 29, I998. attached to the brief.) They have not filled out the postal search paper to retrieve the mail, which supports the idea that U.S. Attorney did not mail the papers to me in the first place.

4. On November 20, I997, I mailed with certified mail Z 230 75I 475 my complaint versus NSA, DIS and OSIA to USDC Columbia, together with my application to proceed in forma pauperis, my entry of appearance, my motion to the court to arrange that defendants are being served with summons and complaint, because I am indigent plaintiff, with a civil cover sheet, cover letter for clerk Mayer Whittington, confirmation copies and a selfaddressed stamped envelope to get my confirmation copies back with evidence of filing. (See app. HH, copy of my letter to clerk Mayer Whittington, See all papers in court file of this case.)

I received no response whatsoever by the court on this case and none of my confirmation copies were mailed back to me.

On December I3, I997, I complained to clerk Nancy Mayer Whittington, that I receive no response on my case and still don't know the case file number. (See this communication attached as app. II to Opening Brief)

USDC of Columbia ignored this mail again and violated my rights to secure papers and being informed about my own case.

On December 29, I997, I wrote a change of address note to the court on my case, but fifty days after I had filed this case, I still was not informed about the case number of my case at USDC Columbia, which is very strange.

This was the first paper on this case which came back to me but not with a filed stamp, only with a "received"-stamp of January 5, I998. I also want to point the appeal court to the fact, that the case docket number was still kept secret by USDC Columbia before me. (See app. JJ, copy of this notice attached to the brief)

I had no idea what happened on my case, if defendants were summoned or not, I was conspiratively not informed about my case by either USDC of Columbia nor U.S. Marshal of Columbia, who served apparently complaint and cummons to the defendants, but who did not mail me the process return receipts.

Finally on February 20, I998, I received a bit more information about my case. U.S. Attorney of Columbia, Wilma A. Lewis and her assistant Steven J. McCool filed for defendants a motion for enlargement of time and mailed me a service copy on February 20, I998. However, they knew too, that court deliberately had not informed me about my own case number, so they altered the case number. They wrote to me that my case would have docket number 96-0066 to confuse me and deny my right to be informed about my own case and wanted me to misfile my papers under wrong case number. (See this motion in the court files.)

Actually, my case was filed end of November I997, and defendants should have been served also in this time. They had plenty of time to organize their papers and file their motions and extention of time just served deliberate delay.

On February 26, I998, I wrote an objection to defendants proposed order for extention of time. (See this objection in court files)

Also on February 26, I998, I wrote a letter to clerk Nancy Mayer Whittington to clarify status of case, to mail me a docket sheet and to inform me about the proper case number of my case. (See app. KK copy of this letter attached to the brief.)

Also on February 26, I998, I filed a supplemental complaint, informing court, that defendant had finally responded to my FOIA/PA requests but all denied my right for affidavit as to their no records determinations. (See this supplemental complaint in original court files of this case.)

I received no clarification by this arrogant unconstitutional court, no docket, no rights.

On February 24, I998, judge Henry H. Kennedy rendered an order,

filed next day granted defendants enlargement of time, including April 24, I998. (See his order in original court files.)

None of my confirmation copies, that were mailed to USDC Columbia on February 26, I998 together with a SASE were returned to me with evidence of filing.

On April I9, I998, U.S. Attorney of Columbia, Wilma A. Lewis and her assistant Steven McCool mailed on April I9, I998, another copy to me of a second motion for enlargement of time, again showing no good and true reasons why they could have not complied with first order of enlargement of time. They also continued to use wrong case number 96-0066 to confuse me and make me file my papers under wrong case number. (See this motion on original court files of this case.)

As not other expected, instead of throwing the book at US Attorney of Columbia and her assistant, judge Kennedy granted them another motion for enlargement of time in this case on April 28, I998, filed next day, including May 4, I998. I got the feeling that I have no rights at all, not even the right to know what happens on my case, no rights even to know the proper case number, no rights for a docket, and judge Kennedy would let come defendants come away with murder. He grants to them anything and nothing to me.

On May 8, I998, judge Kennedy ordered me to respond to defendants motion to dismiss or in alternative for summary judgment, otherwise he would dismiss my case. (See his order of May 7, I998, filed next day attached to the brief as app. LL)

Fact is, that I had not received any copy of what U.S. Attorney of Columbia filed. I had to wrote on May I0, I998 to clerk Mayer Whittington of USDC and also to U.S. Attorney of Columbia and complained that I can't respond, because received no service copy.) (See app. MM, copy of my mail to those attached to Opening Brief)

On May I5, I998, I filed an affidavit and a motion to the USDC that I received no service copy by defendant's attorneys. (See my affidavit and motion in court files.)

On May I5, I998, judge Kennedy rendered another order to my disadvantage, another order that is confusing. He finally acknowledged that I was granted leave to proceed in forma pauperis with this action and that the court authorized the US Marshal to complete service of process. That some defendants have been served, but defendant "On-Site-Inspection-Agency" has been not served as on May I3, I998. He ordered me to "complete name" and address of this defendant, otherwise case might be dismissed against this defendant. (See app. NN, copy

of this order, attached to the brief.)

The order is so strange, because I) why can't clerk of court or US Marshal Service not open a Washington D.C. phone directory or other address book, if the address that I provided wasn't anymore correct, and because 2) On-Site-Inspection Agency had responded to complaint. Their affidavit was attached to what U.S. Attorney of Columbia filed around May I, I998 to this court. In other words: Judge Kennedy had in his file the response by this agency but knew that I had not received a copy and could not know of it.

On May 22, I998, U.S. Attorney of Columbia filed defendants notice of service, that he served me with service copy on May I8, I998. They had mailed allegedly their papers to my former address. (See this notice in court files of this case.)

I am also not convinced if U.S. Attorney of Columbia indeed mailed me a copy of their response and the affidavits of the defendants or if they tried to not get those papers to me at all, because I just moved within the same apartment house to another apartment. From 3I0 to 40I. The mailman knows me very well and I receive constantly mail that is still addressed to my former apartment number. Also, the mail forwarding order by the USPS is still valid. And finally, U.S. Attorney was informed about my new apartment number.

This suspicion is supported by the fact that U.S. Attorney of Columbia is unwilling to fill out a postal search paper for the missing mail.

On May 29, I998, I filed a response to order by judge Kennedy of May I5, I998, informing him (what he already knew when he rendered the order of May I5, I998) that no service to On-Site-Inspection-Agency is anymore necessary, because this agency responded to my complaint.

The court mailed my confirmation copies back and denied on them again evidence of filing of this motion.

(See this motion in court files of this case.)

Finally on May 2I, I998, three weeks after defendant's attorneys filed their papers in USDC of Columbia, I received a copy of their motion to dismiss and alternative summary judgment and the attached three affidavits by the three defendants. (See their motion and the affidavits in original court files of this case.)

On May 29, I998, I responded to defendants motion to dismiss, their memo in support and to their incomplete statement of facts. I attached my I6 pages long affidavit and proved to the court, that the affidavits by NSA, by Gary W. Winch of April 20, I998, and the

affidavit by DIS or DSS, Leslie Blake of March 23, I998 and the affidavit by CSIA, David Rigby of April I6, I998 are wrongful, incomplete and not made in good faith. (See my affidavit and the appendices in original court file of this case.)

The USDC of Columbia, did again not provide me with evidence of filing on my confirmation copies of those papers.

On June I6, I998, U.S. Attorney of Columbia files a Praecipe in this case, saying that U.S. Attorney Steven J. McCool would withdraw from this case and U.S. Attorney Assistant David T. Smorodin would take case over. No reason was given, as to why McCool withdrawed from my case. (See original court files hereto.)

On July 20, I998, the U.S. District Court of Columbia District judge Henry H. Kennedy rendered an order and a memorandum decision in above captioned case. (See a copy of the order and the memo attached)

On July 25, I998, I mailed my Notice of Appeal to this order and memo to the U.S. District Court of Columbia. (See app. QQ a copy of the NOA attached to the brief.)

Judge Kennedy ruled that the agencies fulfilled their duty towards Freedom of Information Act/Privacy Act, Title 5, USC, 552 and 552 a, however, his ruling was very superficial, if not very biased towards me. The evidence in this case, as filed as original records of this case or attached to this Opening Brief shows that the searches that have been done by the three agencies were not being done as to FOIA/PA standards and all three affidavits as finally provided by the defendants were dishonest and not written in good faith.

On November I2, I998, U.S. Court of Appeals for Columbia Circuit judges Silberman, Henderson and Tatel ruled in a judgment on this appeal case 98-5364, which is same superficial as the USDC ruling, that they affirm, because I would have failed to demonstrate the search for the documents that I requested were not reasonably conducted by the agencies or that the affidavits were not submitted in good faith. The judges overlooked all the facts and the evidence that I filed, that proved the bad faith and no adequate searches by all three agencies.

On November I7, I998, I mailed my Petition for Rehearing of the case to the Columbia Circuit Court and requested by the judges to declare themselves biased towards my case, Mark Rathbun and myself. They refused so and denied rehearing of the case on December 23, I998.

REASONS WHY PETITION FOR WRIT OF CERTIORARI SHOULD BE GRANTED:

The Petition should be granted because of the wrongful ruling by Judge Kennedy and the wrongful sanctioning by the Columbia Circuit Court judges, that calls for U.S. Supreme Court supervision as to rule I0 of the high court.

I) Judge Kennedy deliberately did not look at my case in the most favorable light, as he is supposed to by law. There were genuine issues of material facts and these are entitled to judgment as a matter of law. Rule 56 (c), Fed. R. Civ. P. See Celotex Corp. v. Catrett, 477 U.S. 3I7 (I986).

2) In my affidavit, as filed by the USDC as entry 26, on the docket sheet of this case, on June I, I998, I listed the outrageous denials of my rights by the three defendants and supported my affidavit with evidence. None of the three agencies had handled the FOIA/PA requests of mine per FOIA/PA standards. In my affidavit and with the evidence attached, I showed to the USDC Columbia that the affidavits as provided by the three defendants are untrustworthy, incomplete and even false. I showed that there is a genuine issue for trail. See Andersen v. Liberty Lobby Inc. 477 U.S. 242, 248, (I989) and see the original affidavit with the exhibits in the original court files of this case.

3) All reasonable inferences that may be drawn from the facts must be drawn in favor of the non-moving party. Id. at 255. Judge Kennedy has not ruled in my favor, despite the striking evidence of wrongdoing of defendants.

4) The court may award summary judgment solely on the basis of reasonably specific detail provided in affidavits or declarations. See Military Audit Project v. Casey, 656 F2d 724, 738 (D.C. Cir. I98I) Judge Kennedy received evidence by me in my affidavit, supported with documents that showed that the affidavits by defendants were not reasonably specific detailed.

5) While the current law says that an agency has not to conduct an exhausting search for documents responsive to a request, is an agency on the other side not allowed to deliberately withhold documents or provide affidavits that were not done in good faith as in my case. Judge Kennedy twisted the facts of the case around. He blessed absolutely superficial "searches", superficial "determinations of no records" and deliberately wrongful or incomplete affidavits. The methods that all three agencies applied to get hold of my records were not "methods reasonably expected to produce the information requested". (See Oglesby vs. United States Dept. of the Army, 920 F2d 57, 68

(D.C. Cir. I990)).

6) Only in absence of countervailling evidence of apparent inconsistency of proof, affidavits that explain in reasonable detail the scope and method of search conducted by the agency will suffice to demonstrate compliance with the obligation imposed by FOIA. See Perry v. Block, 684 F2d I2i, I27 (D.C. Cir. I982).

In my case, I proved that all three affidavits by all three defendants are inconsistent and I attached this evidence to my affidavit as filed in USDC Columbia on June I, I998.

As the declarations were inconsistant, contained omissions and falsehoods, judge Kennedy, if he would be a impartial and non-biased judge would have ruled that the search of the agencies were not trustworthy or reasonably calculated to uncover all relevent documents.

7) Judge Kennedy also ruled wrongfully that I would have only povided my birth date to defendant Defensive Investigative Afency, but only else "little useful" information. I provided DIS with an affidavit of October 8, I997, that provided DIS and also the other two agencies with enough data to myself that would have enabled them to make a honest and solid search of the records they are having. (See this affidavit attached to my complaint as filed in USDC)

8) Judge Kennedy used critic that I "would find fault with nearly every step of defendants' responses to my requests". Fact is that if these faults, that judge Kennedy conveniently overlooked, would not exist, I would be not able to find them. There are so many faults by the defendants, as I listed in the "Statement of the Case-section' of this brief and in my affidavit that was filed June I, I998 in the District Court, that it is outrageous that judge Kennedy did not find a single fault, despite having received the evidence of these faults by defendants.

9) Judge Kennedy knew that the government has the burden of shewing that is has conducted a search reasonably calculated to produce all documents relevant to the FOIA/PA request. (See Miller v. Dept. of State, 779 F2d I378, I983) (8th Cir.). The government has to provide the FOIA/PA requester with a relatively detailed non-conclusory description of it's search process. (See Weissberg vs. U.S. Dept. of State, at 705 F2d ar I35I.)

Judge Kennedy knew that none of the three agencies and neither DFOISR has provided me with a relatively detailed non-conclusory description of their search process and he knew that the agencies ignored parts of my FOIA/PA requests and never searched the records as to these parts of my requests.

I0) Judge Kennedy dismissed that I challenged numerous paragraphs in the declarations of the three defendants. Judge Kennedy deliberately overlooked the legitime basis to question the affidavits. I pointed out to the District Court very obviously wrongdoing by the agencies. incomplete or false data in the affidavits, and judge Kennedy had just in mind to let the defendants come away with denying a proper search for my records or a complete search for my records.

II) Judge Kennedy found all three declarations "suffient detailed". This is so ridiculous, that it raises the question if judge Kennedy indeed has read the declarations of the three defendants. All three declarations are unspecific and don't meet FOIA/PA standards.

I2) Judge Kennedy ruled wrongfully that I would have not provided no evidence as to the bad faith of the agencies. Fact is, that I provided the evidence in my affidavit and response motion of June I, I998, but judge Kennedy is unwilling to accept the evidence.

I3) Judge Kennedy is bias towards me, this also explains why his court made no case number of this case available to me for months in which my case was pending at the USDC Columbia.

I4) Court of judge Kennedy also shows evidence of bias by denying to me my constitutional right of safe papers, e.g. my confirmation copies of my papers filed to this court on this case were not returned to me with filed stamp as requested by me.

I5) Judge Kennedy also spoiled defendants by allowing their attorneys to come away with a pattern of delaying the case by filing one motion for enlargement of time after the other, without having provided any convincing evidence as to that those motions were not filed for purpose of delay only. I am certain, that if I would have filed only one justified motion for enlargement of time, judge Kennedy would have not granted such.

I6) I also claim that judge Kennedy knew that Office of U.S. Attorney would not mail the motion to dismiss or for summary judgment and the affidavits of the defendants to me, so that I can't respond to them. I claim that when judge kennedy ordered me on May 8, I998 to respond to defendants motions, he knew that I had not received a service copy by defendants attorneys and would be unable to respond.

17) On May 15, 1998, judge Kennedy filed another order to my disadvantage, after he discovered after May 10, 1998, that I would not let defendants come away without requesting service copies of their affidavits and motion to dismiss or alternatively summary judgment. Judge Kennedy suddenly tried to release On-Site-Inspection Agency from the list of the defendants, by ordering that I provide either clerk with the current address of this agency or that this defendant will not longer be defendant of my case. It was easy to conclude that judge Kennedy searched for another reason to let a defendant come off the hook.

Fact is, that District Court arranged for service of complaint and summons of all three defendants on January 23, 1998. (See docket sheet of this case) In case the service to On-Site Inpsection Agency came back to the court unexecuted, why did the court of judge Kennedy not either have clerk look in a governmental directory to find out proper or current address of this agency, or why did court of judge Kennedy not ask me around January 23, 1998 to provide this address? The answer is, because court of judge Kennedy had secretly determined that I should not know such important details as the case number of my own case and what was filed and not filed.

This order is so strange, because On-Site-Inspection Agency had responded to my complaint. Their response and affidavit was attached to the memo that defendants attorneys had deliberately not mailed to me that I could not respond. Judge Kennedy had this memo and the affidavit by On-Site Inspection Agency in his file when he rendered the order of May 15, 1998 to excuse this defendant from the list of defendants and he must have known that U.S. Attorney of Columbia had not mailed me a copy of their motions and the memo and that I would not know that On-Site-Inpsection Agency has responded.

This order is evidence of a set up and a conspiracy against my rights by judge Kennedy, the defendants and their attorneys.

18) Despite being informed about judge Kennedy's bias and despite being informed that the defendants ignored parts of my FOIA/PA requests and despite having received the evidence of bad faith by the agencies, e.g. evidence that their declarations contained omissions and falsehoods, the Columbia Circuit Court judges did not want to hear me to the case and wrongfully ruled with a judgment on November 12, 1998 that I would have failed to demonstrate that the searches were not reasonably calculated and that the affidavits were not submitted in

good faith. Fact is, the Columbia Circuit court judges Silverman, Henderson and Tatel are same biased towards my case, Mark Rathbun and myself as judge Kennedy is. They are were unwilling to look at the evidence. The rulings of both courts are rulings of corruption.

CONCLUSION:

Pursuant to U.S. Supreme Court Rule 10.1(a), it calls for the supervision of the highest court when an appeal court as the U.S. Court of Appeals for Columbia Circuit has so far departed from the accepted and usual course of judicial proceedings as in my case, or if an appeal court santioned such a departure by the lower court as in my case.

Therefore, I ask the U.S. Supreme Court, in the name of the U.S. Constitution to grant this Petition for Writ of Certiorari.

Dated this: January 19, 1999 Barbara Schwarz by Barbara Schwarz

MAILING CERTIFICATE: A copy of foregoing petition was mailed with prepaid first class postage to U.S. Department of Justice, Attn.: Solicitor General, Washington D.C. 20530, and to U.S. Attorney of Columbia, Wilma A. Lewis, U.S. Attorney Assistants R. Craig Lawrence and David T. Smorodin, Judiciary Center, 555 Fourth Street, N.W. Washington D.C. 20001.

Dated this: January 19, 1999 Barbara Schwarz by Barbara Schwarz

TYPE I APPEAL
JURY

U.S. District Court
USDC District of Columbia (Washington)

CIVIL DOCKET FOR CASE #: 98-CV-66

SCHWARZ v. NSA, et al
Assigned to: Judge Henry H. Kennedy
Demand: $0,000
Lead Docket: None
Dkt# in other court: None

Filed: 01/09/98
Jury demand: Plaintiff
Nature of Suit: 895
Jurisdiction: US Defendant

Cause: 05:552 Freedom of Information Act
Case type: 1. civil 2. pro n

BARBARA SCHWARZ
plaintiff

BARBARA SCHWARZ
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v.

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Washington, DC 20001

Wilma Antoinette Lewis
(301) 514-6601
[COR LD NTC gvt]
U.S. ATTORNEY'S OFFICE
Civil Division
555 Fourth Street, NW
Washington, DC 20001

DEFENSE INVESTIGATIVE SERVICES
federal defendant

David T. Smorodin
(See above)
[COR LD NTC gvt]
Steven Joseph McCool
[term 06/16/98]

App. A

(See above)
[COR LD NTC]

Wilma Antoinette Lewis
(See above)
[COR LD NTC gvt]

ON-SITE INSPECTION AGENCY
federal defendant

David T. Smorodin
(See above)
[COR LD NTC gvt]
Steven Joseph McCool
[term 06/16/98]
(See above)
[COR LD NTC]

Wilma Antoinette Lewis
(See above)
[COR LD NTC gvt]

			TYPE I
1/9/98	1	COMPLAINT filed by plaintiff BARBARA SCHWARZ; jury demand; attachments (tlh) [Entry date 01/21/98]	APPEAL JURY
1/9/98	--	SUMMONS (5) issued to federal party(s) federal defendant NSA, federal defendant DEFENSE INVESTIGATIV, federal defendant ON SITE INSPECTION , and non-parties: U.S. Attorney and U.S. Attorney General. (tlh) [Entry date 01/21/98]	
1/9/98	2	APPLICATION by plaintiff BARBARA SCHWARZ to proceed in forma pauperis (tlh) [Entry date 01/21/98]	
1/9/98	--	ORDER by Judge Aubrey E. Robinson granting motion to proceed in forma pauperis [2-1] by BARBARA SCHWARZ (fiat) (N) (tlh) [Entry date 01/21/98]	
1/9/98	3	NOTICE OF CHANGE OF ADDRESS by BARBARA SCHWARZ . New address: 335 East Broadway, Apt. 401 Salt Lake City UT 84111. (tlh) [Entry date 01/21/98]	
1/23/98	4	RETURN OF SERVICE/AFFIDAVIT of summons and complaint executed upon U.S. Attorney on 1/21/98 (tlh) [Entry date 01/29/98]	
1/23/98	5	RETURN OF SERVICE/AFFIDAVIT of summons and complaint unexecuted as to federal defendant ON SITE INSPECTION (tlh) [Entry date 01/29/98]	
2/2/98	6	RETURN OF SERVICE/AFFIDAVIT of summons and complaint executed upon U.S. Attorney General on 1/26/98 (tlh) [Entry date 02/03/98]	
2/5/98	7	RETURN OF SERVICE/AFFIDAVIT of summons and complaint executed on 2/3/98 upon federal defendant DEFENSE INVEST (tlh) [Entry date 02/06/98]	
2/20/98	8	MOTION filed by federal defendant NSA, federal defendant DEFENSE INVEST, federal defendant ON SITE INSPECTION to extend time to 04/20/98 to answer complaint [1-1] (tlh) [Entry date 02/23/98]	
2/25/98	9	ORDER by Judge Henry H. Kennedy : granting motion to extend time to 04/20/98 to answer complaint [1-1] [8-1] by federal defendant ; Answer extended to 4/20/98 for ON SITE INSPECTION, for DEFENSE INVEST, for NSA (N) (adc)	
3/3/98	10	OBJECTIONS by plaintiff BARBARA SCHWARZ to order granting defendants two months enlargement of time to respond to the complaint [9-1] (tlh) [Entry date 03/04/98]	
3/3/98	11	MOTION filed by plaintiff BARBARA SCHWARZ to clarify the case number (tlh) [Entry date 03/04/98]	

			TYPE I
3/3/98	12	MOTION filed by plaintiff BARBARA SCHWARZ for status of case (tlh) [Entry date 03/04/98]	APPEAL JURY
3/17/98	13	AMENDED COMPLAINT by plaintiff BARBARA SCHWARZ [1-1] (fiat) KENNEDY, J (tlh) [Entry date 03/18/98]	
3/17/98	--	SUMMONS NOT ISSUED. (tlh) [Entry date 03/18/98]	
4/20/98	14	MOTION filed by federal defendant NSA, federal defendant DEFENSE INVEST, federal defendant ON SITE INSPECTION to extend time to 05/04/98 to answer complaint [1-1] (tlh) [Entry date 04/21/98]	
4/29/98	15	ORDER by Judge Henry H. Kennedy : granting motion to extend time to 05/04/98 to answer complaint [1-1] [14-1] by ON SITE INSPECTION, DEFENSE INVEST, NSA ; Answer extended to 5/4/98 for ON SITE INSPECTION, for DEFENSE INVEST, for NSA (N) (dcn) [Entry date 04/30/98]	
5/1/98	16	RETURN OF SERVICE/AFFIDAVIT of summons and complaint executed on 4/21/98 upon federal defendant NSA (tlh) [Entry date 05/05/98]	
5/4/98	17	MOTION filed by federal defendant NSA, federal defendant DEFENSE INVEST, federal defendant ON SITE INSPECTION to dismiss complaint [1-1], or in the alternative for summary judgment ; exhibits (3) (tlh) [Entry date 05/05/98]	
5/8/98	18	ORDER by Judge Henry H. Kennedy : plaintiffs response to defendants motion to dismiss due by 6/8/98 (N) (dcn) [Entry date 05/13/98]	
5/15/98	19	ORDER by Judge Henry H. Kennedy : directing plaintiff to file complete name and address of defendant by 6/8/98 (N) (dcn) [Entry date 05/18/98]	
5/18/98	20	RESPONSE by plaintiff BARBARA SCHWARZ to order [18-2] (tlh) [Entry date 05/19/98]	
5/18/98	21	MOTION filed by plaintiff BARBARA SCHWARZ to order defendants to mail service copies to her (tlh) [Entry date 05/19/98]	
5/18/98	22	MOTION filed by plaintiff BARBARA SCHWARZ to extend time four weeks to respond to motions and declarations filed by defendants (tlh) [Entry date 05/19/98]	
5/22/98	23	NOTICE OF FILING by federal defendant NSA, federal defendant DEFENSE INVEST, federal defendant ON SITE INSPECTION regarding notice of service for motion (tlh) [Entry date 05/26/98]	

Proceedings include all events.
1:98cv66 SCHWARZ v. NSA, et al TYPE I
APPEAL JURY

6/1/98	24	RESPONSE by plaintiff BARBARA SCHWARZ in opposition to motion to dismiss complaint [1-1] [17-1] by ON SITE INSPECTION, DEFENSE INVEST, NSA . (tlh) [Entry date 06/02/98]
6/1/98	25	RESPONSE by plaintiff BARBARA SCHWARZ to order [19-2] (tlh) [Entry date 06/02/98]
6/1/98	26	AFFIDAVIT by plaintiff BARBARA SCHWARZ in response to the declarations by national security agency; exhibits (35) (tlh) [Entry date 06/02/98]
6/16/98	27	SUBSTITUTION OF COUNSEL for federal defendants, substituting David T. Smorodin for attorney Steven Joseph McCool (jmf) [Entry date 06/17/98]
7/20/98	28	MEMORANDUM OPINION by Judge Henry H. Kennedy (N) (adc) [Entry date 07/21/98]
7/20/98	29	ORDER by Judge Henry H. Kennedy : granting motion to dismiss complaint [1-1] [17-1] by ON SITE INSPECTION, DEFENSE INVEST, NSA, granting motion for summary judgment [17-2] by ON SITE INSPECTION, DEFENSE INVEST, NSA (N) (adc) [Entry date 07/21/98]
7/28/98	30	NOTICE OF APPEAL by plaintiff BARBARA SCHWARZ from order [29-1] , entered on: 07/21/98. IFP Copies mailed to counsel of record (tlh) [Entry date 07/30/98]
7/30/98	--	TRANSMITTED PRELIMINARY RECORD on appeal [30-1] by BARBARA SCHWARZ to U.S. Court of Appeals (tlh)
7/31/98	--	USCA # 98-5364 assigned for appeal [30-1] by BARBARA SCHWARZ (tlh)

General Dock

D.C. Circuit Court of Appeals

98-5364

98-5364 Filed: 7/31/98

Court of Appeals Docket #: 98-5364
Suit: 2895 Freedom of Information Act
Schwarz, Barbara v. Nat'l Security Agcy, et al

Appeal from: U.S. District Court

Lower court information:

District: 0090-1 : 98cv00066 lead: 98cv00066
Trial Judge: Henry H. Kennedy, US District Judge
Date Filed: 1/9/98
Date order/judgment: 7/20/98
Date NOA filed: 7/28/98

Fee status: in forma pauperis

Prior cases:
None
Current cases:
None

App. B

BARBARA SCHWARZ Plaintiff - Appellant	Barbara Schwarz [COR LD NTC pro] 335 East Broadway Apartment 401 Salt Lake City, UT 84111
v.	
NATIONAL SECURITY AGENCY Defendant - Appellee	Wilma Antoinette Lewis, U.S. Attorney 202-514-6600 [COR gvt] R. Craig Lawrence, Assistant U.S. Attorney [COR LD NTC gvt] David T. Smorodin, Assistant U.S. Attorney 202-307-0406 [COR gvt] U.S. Attorney's Office (USA) Civil Appellate 555 4th Street, NW Washington, DC 20001 202-514-7159
DEFENSE INVESTIGATIVE SERVICES Defendant - Appellee	Wilma Antoinette Lewis, U.S. Attorney (See above) [COR gvt] R. Craig Lawrence, Assistant U.S. Attorney (See above) [COR LD NTC gvt] David T. Smorodin, Assistant U.S. Attorney (See above) [COR gvt]
ON-SITE INSPECTION AGENCY Defendant - Appellee	Wilma Antoinette Lewis, U.S. Attorney (See above) [COR gvt] R. Craig Lawrence, Assistant U.S. Attorney (See above) [COR LD NTC gvt] David T. Smorodin, Assistant U.S. Attorney (See above) [COR gvt]

Barbara Schwarz

Plaintiff - Appellant

v.

National Security Agency; Defense Investigative Services; On-Site Inspection Agency

Defendants - Appellees

7/31/98	CIVIL- CASE docketed. Notice of A*..al filed by Appellant Barbara Schwarz. [371123-1] (jth)
7/31/98	CLERK'S ORDER filed directing Appellant to file [371127-1]: docketing statement; certificate of counsel; statement of issues; lower court decision; and procedural motions due 8/31/98; dispositive motions due 9/14/98. Any request by appellant for the appointment of counsel is due by 8/17/98. Directing Appellee's to file [371127-2]: certificate of counsel; procedural motions; counsel's entry of appearance form due 8/31/98; dispositive motions due 9/14/98. Failure by appellant to comply with this order shall result in dismissal of the case for lack of prosecution. The Clerk is directed to send a copy of this order to appellant both by certified mail, return receipt requested and by first class mail. (jth)
7/31/98	CERTIFIED MAIL [371130-1] SENT with return receipt requested (Receipt #: Z 125 649 568) of the clerk's order filed this date [371127-1]. Certified mail return receipt due 8/31/98 for Barbara Schwarz. (jth)
7/31/98	FIRST CLASS MAIL SENT [371131-1] of the clerk's order filed this date sent to the Pro Se Appellant [371127-1]. (jth)
8/3/98	NOTICE filed by Appellant Barbara Schwarz regarding her entry of appearance form-pro se. [372690-1] Certificate of service date 7/30/98. [Appellant indicates that she will not request the appt. of counsel] (mcm)
8/3/98	BRIEF filed by Appellant Barbara Schwarz [372706-1]. Copies: 14. [SERVED ON CRAIG LAWRENCE BY CLERK'S OFFICE ON 8/7/98] (mcm)
8/6/98	INITIAL SUBMISSIONS filed by Appellant Barbara Schwarz [372687-1] : docketing statement; certificate of counsel; statement of issues; lower court decision. (mcm)
8/7/98	CLERK'S ORDER filed establishing the remaining briefing schedule [372708-1] : Appellee's brief due on 9/8/98; Appellant's reply brief due on 9/22/98. The clerk is directed to send a copy of this order and a copy of the appellant's brief to the appellee. (mcm)
9/8/98	BRIEF filed by Appellee's National Security Agency, Defense Investigative Services, and the On-Site Inspection Agency [380746-1]. Copies: 15. Certificate of service date 9/8/98. (jth)
9/16/98	REPLY BRIEF filed by Appellant Barbara Schwarz [382617-1]. Copies: 15. Certificate of service date 9/14/98. (lvs)
10/26/98	NOTICE filed by Appellant Barbara Schwarz requesting the status of her case [392101-1]. (lvs)

28/98	Letter sent acknowledging receipt of [392102-1] notice from appellant [392101-1]. Documents sent: Copy of notice from appellant and a copy of docket sheet. (lvs)
10/28/98	PER CURIAM ORDER filed to dispose of this case without oral argument on the basis of the record and presentations in the briefs pursuant to D.C. Circuit Rule 34(j) [392109-1]. Before Judges: Silberman, Henderson, and Tatel. (jth)
11/12/98	JUDGMENT (w/o memo) affirming the district court's order filed 7/20/98 [395669-1]. The Clerk is directed to withhold issuance of the mandate pending disposition of any timely petition for rehearing. Before Judges Silberman, Henderson, Tatel. (edb)
11/20/98	PETITION filed (5 copies) by Appellant Barbara Schwarz (certificate of service dated 11/17/98) for rehearing [398358-1]. (mcm)
12/23/98	PER CURIAM ORDER filed denying the petition for rehearing [398358-1]. (Mandate may issue on or after 12/31/98). (Mandate may issue on or after 12/31/98). Before Judges Silberman, Henderson, Tatel. (lvs)
12/24/98	LETTER filed by Appellant Barbara Schwarz requesting status of the petition for rehearing [406578-1]. Letter dated 12/20/98. (jth)
1/5/99	Letter sent to appellant enclosing a copy of the docket sheet in this case and a copy of the order of 12/23/98 [406579-1]. (jth)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Barbara Schwarz,

Plaintiff,

v.

National Security Agency, et al.,

Defendants.

Civil Action No. 98-0066 (HHK)

FILED
MAY 08 1998
CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

ORDER

This matter comes before the Court upon Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment. Plaintiff is proceeding *pro se* in this matter.

In Fox v. Strickland, 837 F.2d 507 (D.C. Cir. 1988), the Court of Appeals held that a district court must take pains to advise a *pro se* party of the consequences of failing to respond to a dispositive motion. "That notice . . . should include an explanation that the failure to respond . . . may result in the district court granting the motion and dismissing the case." Id. at 509. Subsequently, in Neal v. Kelly, 963 F.2d 453 (D.C. Cir. 1992), the Court of Appeals stated that the district court must inform *pro se* litigants that, on a motion for summary judgment, "any factual assertions in the movant's affidavits will be accepted as being true unless [the opposing party] submits his own affidavits or other documentary evidence contradicting the assertion." Id. at 456 (quoting Lewis v. Faulkner, 689 F.2d 100, 102 (7th Cir. 1982).

The court in Neal also specified that the "text of Rule 56(e) should be part of the notice" issued to the *pro se* litigant. Id. Under Rule 56(e) of the Federal Rules of Civil

App. C

Procedure,

> Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify as to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials in the adverse party's response, but the adverse party's response by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

Fed. R. Civ. P. 56(e). Thus, parties, such as plaintiff, who are adverse to a motion for summary judgment must rebut the moving party's affidavits with other affidavits or sworn statements; simple allegations that the moving party's affidavits are inaccurate or incorrect are not sufficient. For these purposes, a verified complaint shall serve as an affidavit. See Neal, 963 F.2d at 457-58.

Accordingly, it is this 7th day of May, 1998,

ORDERED that the plaintiff shall file a response to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment no later than June 8, 1998. If plaintiff does not respond, the Court may treat the motion as conceded and enter judgment in favor of the defendants.

Henry H. Kennedy, Jr.
HENRY H. KENNEDY, JR.
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Barbara Schwarz,

Plaintiff,

v.

National Security Agency, et al.,

Defendants.

Civil Action No. 98-0066 (HHK)

FILED
MAY 15 1998
CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

ORDER

Plaintiff was granted leave to proceed *in forma pauperis* to file this action. The Court authorized the United States Marshal to complete service of process, pursuant to 28 U.S.C. 1915(c). Some defendants have been served, but defendant "On-Site Inspection Agency" has not been served. Accordingly, it is this 13th day of May, 1998,

ORDERED that plaintiff file with the Court the complete name and correct address of the defendant referred to as "On-Site Inspection Agency" for purposes of service, pursuant to Fed. R. Civ. P. 4(h), on or before June 8, 1998, in order for the U.S. Marshal to effect service. Failure to comply with this order may cause dismissal of the case against the defendant.

Henry H. Kennedy, Jr.
HENRY H. KENNEDY, JR.
United States District Judge

App. D

19

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Barbara Schwarz,

Plaintiff,

v.

National Security Agency, et al.,

Defendants.

Civil Action No. 98-0066 (HHK)

FILED
JUL 20 1998
NANCY MAYER-WHITTINGTON, CLERK
U.S. DISTRICT COURT

ORDER

For the reasons set forth in a Memorandum Opinion issued today, it is this 20th day of July, 1998,

ORDERED that the Defendants' Motion to Dismiss or, In the Alternative, for Summary Judgment [17] is **GRANTED**; and it is

FURTHER ORDERED that the action is **DISMISSED** with prejudice. All other pending motions are denied as moot. This is a final appealable order. See Fed. R. App. P. 4(a).

Henry H. Kennedy, Jr.
HENRY H. KENNEDY, JR.
United States District Judge

App. E

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Barbara Schwarz,)
)
Plaintiff,)
)
v.) Civil Action No. 98-0066 (HHK)
)
National Security Agency, et al.,)
)
Defendants.)

FILED

JUL 20 1998

NANCY MAYER-WHITTINGTON, CLERK
U.S. DISTRICT COURT

MEMORANDUM OPINION

On October 9, 1997, Barbara Schwarz mailed letters to the National Security Agency ("NSA"), the Defense Investigative Service ("DIS"), and the On-Site Inspection Agency ("OSIA") requesting all records relating to herself, pursuant to the Freedom of Information Act, 5 U.S.C.§ 552. When she had not received a response by November 20, 1997, she filed this action to compel responses from each of these agencies. Defendants have since responded by stating that no records were discovered responsive to plaintiff's requests and, accordingly, moved to dismiss or for summary judgment.

Summary judgment should be granted to the movant if it has shown, when the facts are viewed in the light most favorable to the non-movant, that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law. Rule 56(c), Fed. R. Civ. P.; see Celotex Corp. v. Catrett, 477 U.S. 317 (1986). The party opposing a motion for summary judgment "may not rest upon the mere allegations or denials of his pleading, but . . . must set forth specific facts showing that there is a genuine issue for trial." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). All reasonable inferences that may be drawn from the facts must be drawn in favor of the non-moving party. Id. at 255. In a FOIA case, the Court may award summary judgment solely on the basis of reasonably specific detail provided in affidavits or declarations. Military Audit Project v. Casey, 656 F.2d 724, 738 (D.C. Cir. 1981).

Plaintiff argues that the defendants have not identified all documents responsive to her requests. The FOIA, however, does not require an agency to conduct an exhaustive search for all documents responsive to a request, but rather a reasonable search for requested records using "methods reasonably expected to produce the information requested." Oglesby v. United States Dep't of the Army, 920 F.2d 57, 68 (D.C. Cir. 1990). "[I]n the absence of countervailing evidence or apparent inconsistency of proof, affidavits that explain in reasonable detail the scope and method of the search conducted by the agency will suffice to demonstrate compliance with the obligations imposed by the FOIA." Perry v. Block, 684 F.2d 121, 127 (D.C. Cir. 1982). The affidavit need not "set forth with meticulous documentation the details of an epic search for the requested records," Perry v. Block, 684 F.2d at 127, but must show only "that the search method was reasonably calculated to uncover all relevant documents." Weisberg v. United States Dep't of Justice, 745 F.2d 1476, 1485 (D.C. Cir. 1984).

The NSA searched for records regarding plaintiff in those files its staff thought most likely to contain responsive records, including the personnel, applicant, personnel security, training, and operations files. Declaration of Gary W. Winch ("Winch Decl."), ¶¶ 7, 14. No records were located under plaintiff's name or variations on her name that she provided. Id., ¶ 14. Plaintiff appealed this response on December 12, 1997, three weeks after filing this action. Id., ¶ 15, Attachment ("Att.") 4. In her appeal, plaintiff sought numerous categories

APP. F

of records not previously requested. Id. As such, the appeal was accepted as both an appeal and a new request. Id., ¶ 18, Att. 7. The appeal had not been ruled on by the time defendants filed their motion.

In response to plaintiff's request, DIS asked that she provide her social security number, date of birth, middle name and other information so that positive identification could be made of responsive records. Declaration of Leslie R. Blake ("Blake Decl."), ¶ 5, Att. 2. Plaintiff provided her birth date, but little else useful identifying information, and requested additional records. Id., ¶ 6, Att. 3. DIS conducted a search of its central records system files under each name she provided, but located no responsive records. Id., ¶ 6, Att. 5. Plaintiff appealed this response on December 20, 1997, one month after filing this action. Id., ¶ 7, Att. 6. Plaintiff's appeal was denied. Id., ¶ 8, Att. 8.

The OSIA conducted a search of administration records and files, including electronic databases, for records responsive to plaintiff's request. Declaration of David J. Rigby ("Rigby Decl."), ¶ 5. Plaintiff appealed this response and sought additional and more extensive records. Id., ¶ 6, Att. 3. A renewed search was conducted that again found no responsive records and, accordingly, plaintiff's appeal was denied. Id., ¶ 6, Att. 4.

Plaintiff finds fault with nearly every step of defendants' responses to her requests. Although defendants did not respond to her initial requests withing twenty working days,[1] the FOIA does not mandate disclosure when an agency is untimely. Plaintiff's remedy to an

[1] The FOIA was amended, effective October 2, 1997, to allow agencies twenty working days to respond to requests. Pub.L. No. 104-231, 110 Stat. 2422, amending 5 U.S.C. § 552(a)(6)(A)(i).

untimely response is to file an action in federal court. 5 U.S.C. § 552(a)(6)(C)(i).

Plaintiff also challenges numerous paragraphs of the declarations filed in support of defendants' motion. None of these, however, raise any legitimate basis to question the declarations. "Mere speculation that as yet uncovered documents may exist does not undermine the finding that the agency conducted a reasonable search for them." SafeCard Services, Inc. v. Securities and Exchange Comm'n, 926 F.2d 1197, 1201 (D.C. Cir. 1991). This Court finds that each of the declarations in support of defendants' motion is sufficiently detailed to show that defendants' search was reasonably calculated to uncover all relevant documents. Presented with plaintiff's FOIA request which simply requested all documents relating to herself, and there being no contrary evidence of the existence of responsive records and no evidence of agency bad faith, defendants' search of their files for plaintiff's name was reasonable. Defendants have demonstrated that they each made a good faith effort to conduct a reasonable search using reasonable methods. Accordingly, defendants' motion must be granted.

An appropriate order accompanies this Memorandum Opinion.

Henry H. Kennedy, Jr.
HENRY H. KENNEDY, JR.
United States District Judge

DATE: 7/20/98

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 98-5364 **September Term, 1998**
98cv00066

Barbara Schwarz,
Appellant

v.

National Security Agency, et al.,
Appellees

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT
FILED
OCT 28 1998
CLERK

BEFORE: Silberman, Henderson, and Tatel, Circuit Judges

ORDER

The court concludes, on its own motion, that oral argument will not assist the court in this case. Accordingly, the court will dispose of the appeal without oral argument on the basis of the record and the presentations in the briefs. *See* D.C. Cir. Rule 34(j).

Per Curiam

APP. G

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 98-5364 **September Term, 1998**
98cv00066

Barbara Schwarz,
Appellant

v.

National Security Agency, et al.,
Appellees

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT
FILED NOV 12 1998
CLERK

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BEFORE: Silberman, Henderson, and Tatel, Circuit Judges

JUDGMENT

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs filed by the parties. The court has determined that the issues presented occasion no need for an opinion. *See* D.C. Cir. Rule 36(b). It is

ORDERED AND ADJUDGED that the district court's order filed July 20, 1998, be affirmed. Under the Freedom of Information Act a search need not be perfect, only adequate. The adequacy of the search is measured by the reasonableness of the agency's effort in light of the specific request. *See Meeropol v. Meese*, 790 F.2d 942, 956 (D.C. Cir. 1986). "In demonstrating the adequacy of the search, the agency may rely upon reasonably detailed, nonconclusory affidavits submitted in good faith," *id.*, which "explain in detail the scope and method of the search conducted by the agency." *See Perry v. Block*, 684 F.2d 121, 127 (D.C. Cir. 1982). Appellant has failed to demonstrate the searches conducted "were not reasonably calculated to discover the requested documents," *see SafeCard Services, Inc. v. SEC*, 926 F.2d 1197, 1201 (D.C. Cir. 1991), or that the affidavits were not submitted in good faith. The fact that no documents were found does not mean that the government failed to perform an adequate search. *See Meeropol*, 790 F.2d at 952-53 (government can never conclusively refute a claim that yet unproduced records exist).

The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. *See* D.C. Cir. Rule 41.

Per Curiam

Bills of cost must be filed within 14 days after entry of judgment. The Court looks with disfavor upon motions to file bills of costs out of time.

APP. H

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 98-5364

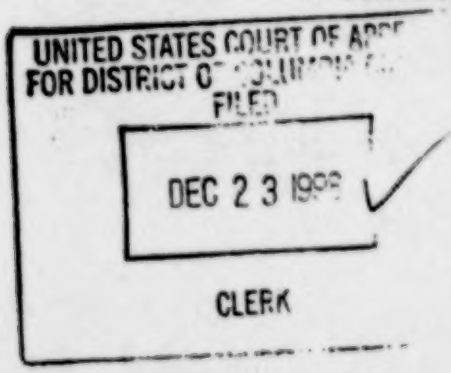
September Term, 1998

98cv00066

Barbara Schwarz,
Appellant

v.

National Security Agency, et al.,
Appellees



BEFORE: Silberman, Henderson and Tatel, Circuit Judges

ORDER

Upon consideration of appellant's petition for rehearing filed November 20, 1998, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: Robert A. Bonner
Robert A. Bonner
Deputy Clerk

App. I